IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 184 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMRUTLAL NANJIBHAI PATEL, THRO'POA SHIVKUBHAI R DHANDHAL - Appellant(s)

Versus

SAMJUBEN BACHUBHAI NARANBHAI & 6 - Respondent(s)

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Appearance :
MR PV HATHI for Appellant(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,
None for Respondent(s) : 2 - 7.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 07/03/2007

ORAL JUDGMENT

1. The appellant of this Appeal from Order is the original plaintiff of Special Civil Suit No. 10

of 2006, which was originally numbered as Regular Civil Suit No. 440 of 2005. The case of the plaintiff is that the suit property which is situated at Village Kothariya of District Rajkot admeasuring 5.28 guntha was purchased by the plaintiff from the deceased – Bachubhai Naranbhai. Defendant Nos. 1 to 3 are the heirs of the deceased – Bachubhai Naranbhai. According to the plaintiff, the deceased – Bachubhai Naranbhai had sold away this land to the plaintiff on 16.09.1996 by receiving full consideration and possession of the same was also handed over to him. In spite of the same, defendant Nos. 1 to 3 in collusion with defendant No. 7 are trying to sale away this land to defendant Nos. 4 to 6. The aforesaid suit is, therefore, filed for declaration and permanent injunction on the ground that defendant Nos. 1 to 3 have no right to transfer the said property to any one. The plaintiff has also challenged the sale deed executed by defendant Nos. 1 to 3 in favour of defendant Nos. 4 to 6. In the aforesaid suit, the plaintiff moved an application for interim injunction at Exh. 5 with a prayer that the defendants may be restrained from entering the

suit premises. Interim injunction is also prayed to the effect that the defendants may be restrained from transferring or alienating the property in question.

2. During the pendency of the suit, defendant Nos. 1 to 3 resisted the said suit by filing their written statement at Exh. 28, wherein they have denied the allegations made in the suit. Defendant Nos. 4 to 6 filed their written statement at Exh. 23, wherein they have denied the claim of the plaintiff. It is the case of the defendants that the plaintiff had approached the said defendants with his power of attorney holder, namely, Kishorbhai Waghela for discussing the matter, as the defendants have formed the proposed society in connection with the suit property. It is also the case of the defendants that it was not possible to get registration of the said sale deed executed by the deceased – Bachubhai Naranbhai in favour of the plaintiff and therefore, the heirs of the deceased – Bachubhai Naranbhai decided to sale their aforesaid land to defendant Nos. 4 to 6 for a sum of Rs.17,97,000/-. Defendant Nos. 4 to 6 have paid Rs.7,11,000/- to defendant Nos.

1 to 3 in presence of the plaintiff and his power of attorney holder – Kishorbhai Waghela and the amount of Rs.10,86,000/- was paid to Kishorbhai Waghela for the purpose of paying the same to the members of the proposed society. The said amount was also paid to the members of the proposed society. It is also the case of the said defendants that the plaintiff has never informed the defendants about any transaction in connection with the said land. It is the case of the said defendants that they are bonafide purchaser of the land in question and the registered sale deed is also in their favour. It is the case of the said defendants that the plaintiff has never given any public notice. It is the case of the said defendants that defendant Nos. 1 to 3 have executed sale deed in favour of defendant Nos. 4 to 6 in which the power of attorney holder of the plaintiff has also signed. On the aforesaid grounds, the suit was resisted by defendant Nos. 4 to 6.

3. The learned trial Judge, after hearing the parties and considering the evidence on record, came to the conclusion that on the basis of registered

sale deed, possession was handed over to defendant Nos. 4 to 6. The learned trial Judge also found that after getting so called document of sale in their favour on 16.09.1996, the plaintiff has never tried to get his name mutated in the revenue records. Not only that the said document was never registered before the registering authority, in view of the fact that at the relevant point of time, Urban Land Ceiling Act was in force and therefore, the said document was not registered and was kept pending for registration. Subsequently, the power of attorney holder of the plaintiff, namely, Nathalal Dodia entered into an agreement with the heirs of the deceased – Bachubhai Naranbhai and cancelled the said transaction of sale. The learned trial Judge has found that since the document was not registered, it can be said as merely agreement between the parties, which can be cancelled by the parties by mutual agreement. Subsequently, the heirs of the deceased – Bachubhai Naranbhai have executed sale deed in favour of defendant Nos. 4 to 6 and revenue entries were also posted in favour of the defendants. The learned Judge has found that the plaintiff was never in

possession of the suit property.

4. Considering the Panchnama carried out by the Court Commissioner, the Court has found that one Babubhai Vaghera had already filed an affidavit in favour of the plaintiff before making Panchnama and thereafter, had signed on the said Panchnama showing that the plaintiff was in possession of the suit property. The trial Court accordingly found that the plaintiff has committed fraud with the Court, as the said Panch has not acted as an independent Panch, but he wanted to favour the plaintiff. The Court had, therefore, not believed the aforesaid Panchnama at mark 16/1. The trial Court rejected the application for interim injunction by giving detailed reasons. The said order is under challenge at the instance of the original plaintiff by way of this Appeal from Order.

5. Mr. Hathi, learned advocate appearing for the appellant – original plaintiff submitted that the deceased – Bachubhai Naranbhai i.e. ancestor of defendant Nos. 1 to 3 executed a sale deed in favour

of the plaintiff in the year 1996 and at that time, the plaintiff had paid Rs.1,50,000/- in cash. The said document was subsequently registered in the year 2005. It is submitted by Mr. Hathi that in that view of the matter, subsequent sale deed executed in favour of defendant Nos. 4 to 6 should be declared as null and void and not binding to the plaintiff. Mr. Hathi also further submitted that when there was a registered document in favour of the plaintiff, its effect is required to be given as per Section 49 of the Registration Act.

6. Mr. Hathi also relied upon certain documentary evidence i.e. power of attorney given by the plaintiff to Shivkubhai Ramkubhai dated 31.03.2005 and copy of the sale deed executed by the deceased – Bachubhai Naranbhai in favour of the plaintiff dated 16.09.1996, which was subsequently registered on 02.09.2005. Mr. Hathi submitted that even though the document was registered on 02.09.2005, its effect is required to be given from the execution of the said documents as per Section 49 of the Registration Act. Mr. Hathi also relied upon

the document of possession agreement by which the plaintiff was entitled to deal with the land. Mr. Hathi also submitted that the memorandum of understanding for cancellation of agreement dated 03.04.2004, which is at mark 24/1, is not notarized, so it has no value in view of Section 17 of the Registration Act.

7. Mr. Hathi submitted that no doubt, it is true that the document in favour of the present plaintiff was presented for registration at a later stage, but the said document can be said to be effective from the date of its execution as per the provisions of Sections 17, 47 and 49 of the Registration Act.

8. On the other hand, Mr. Harin Rawal, learned advocate appearing for defendant Nos. 4 to 6 submitted that the plaintiff has absolutely no case worth the name. It is submitted by Mr. Rawal that since Urban Land Ceiling Act was in operation in the year 1996, the land in question could not have been transferred or could not have been sold by the

original owner – deceased – Bachubhai Naranbhai and therefore, the document was not registered by the authority at all, as the authority has imported many such documents, which were executed in order to defeat the provisions of Urban Land Ceiling Act. Mr. Rawal submitted that on repelling of the said Act, the plaintiff tried to take advantage of the said repeal Act and got the said document registered in September 2005. Mr. Rawal further submitted that there is nothing to show that the plaintiff has tried to assert his right since 1996 for all these years with regard to suit property. Mr. Rawal also submitted that there is a sale deed, which is registered prior in time in May 2005 by which, defendant Nos. 4 to 6 have become owner of the suit property. Mr. Rawal also submitted that the plaintiff very well knew that he has no right, title or interest in the suit land and therefore, he agreed mutually with defendant Nos. 1 to 3 to cancel the agreement of the year 1996 by way of negotiation. Mr. Rawal has also relied on certain documents to substance his arguments.

9. It is required to be considered that the learned trial Judge, after considering the voluminous evidence on record came to the conclusion that the plaintiff has failed to prove his prima facie case. It is not in dispute that in the year 1996, the property in question could not have been transferred by way of sale in view of the Urban Land Ceiling Act. The said document was, therefore, not registered by the authority and as submitted by Mr. Rawal, the said document was impounded. Prima facie, it seems that in view of repealing of Urban Land Ceiling Act, the plaintiff has tried to register the said document in the year 2005. For all these years, name of the plaintiff has not been recorded in the revenue record. The learned trial Judge has considered the documents at mark 48/1 to 48/4. That on the date of filing the suit, defendant Nos. 1 to 3 were in possession of the suit property. As against that the plaintiff has not produced any document showing his possession. The plaintiff has failed to show that he has paid any land revenue or any taxes in connection with the land in question.

10. However, Mr. Hathi, learned advocate for the appellant submitted that even though finding of the trial Court disbelieving the possession of the plaintiff can be said to be proper, then also, the learned trial Judge should have given partial injunction restraining the defendants from transferring or alienating the suit property for which it is submitted by Mr. Hathi that the learned Judge has not considered this aspect in the order.

11. However, in my view, when the trial Court has rightly held that there is no prima facie case in favour of the plaintiff, there is no question of granting any further injunction in any manner. The plaintiff has based his case only on the basis of so called document of the year 1996, which has never come to light, nor the same was registered by the authority and the plaintiff has failed to show on the basis of the said document that he was in possession of the same.

12. Considering the voluminous evidence on record, in my view, the learned trial Judge has

rightly come to the conclusion that the plaintiff has failed to prove his case. The discretion of the trial Court in rejecting the interim application is, therefore, not required to be interfered with by this Court in this Appeal from Order. It is also required to be noted that the plaintiff has never tried to initiate any proceedings at the time when the deceased – Bachubhai Naranbhai was alive and ultimately after his death, the suit was instituted against his heirs and other defendants.

13. It is also required to be noted and as pointed out by Mr. Rawal that at the time of registration of the document, photographs are also annexed with the sale deed, which is at Page-108 of the compilation by which, defendant Nos. 4 to 6 have purchased the land in question, wherein the said document was signed by defendant Nos. 1 to 3 as well as the power of attorney of the plaintiff – Kishorbhai Waghela. As per recital of the said sale deed in Para 2 of the said sale deed, it is clearly stated that the ancestor of the seller (i.e. defendant Nos. 1 to 3 of the suit) had executed a

document of sale in favour of Amrutbhai Nanjibhai Patel (present plaintiff) on 16.06.1996, but as Urban Land Ceiling Act was in force, the said document could not be registered. Thereafter, the said document is impounded by the Government, but in order to see that there may not be any technical objection, the said Amrutbhai Nanjibhai Patel has given consent as a confirming party and the document was signed by Kishorbhai Waghela as power of attorney holder of the plaintiff i.e. Amrutbhai Nanjibhai Patel. The said document is a registered document and the trial Court has rightly found that the plaintiff has never tried to give any public notice, nor has tried to assert his right in any manner and prima facie, it is clear that the plaintiff wanted to take advantage of repeal of Urban Land Ceiling Act.

14. Considering the aforesaid aspects of the matter, in my view, the order of the trial Court is not required to be disturbed in this Appeal from Order. It is also required to be noted that there is no interim order in favour of the plaintiff even from the date of filing of the suit till today.

15. Considering the aforesaid aspects of the matter, I do not find any substance in this Appeal from Order. However, Mr. Hathi submitted that if any transaction is made in future, the same may be made subject to the result of the suit. Mr. Rawal, however, objected that no such observations should be made, as the plaintiff is interested only in extracting money.

16. However, in my view, since the suit is pending, it would be just and proper to hold that if any further transaction is made, the same shall be subject to the final outcome of the suit.

17. It is clarified that the observations made by the trial Court, while deciding the interim application or the observations made by this Court in this order should be treated as tentative in nature and the same shall have no effect in the pending suit and the suit is to be decided on its merits and as per the evidence on record.

18. The appeal is accordingly dismissed.

[P.B.MAJMUDAR,J.]

mrpandya*